IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17932 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARTI AIR TEMP THROUGH PROPRIETOR

Versus

ADDL.INDUSTRIES COMMISSIONER

Appearance:

1. Special Civil Application No. 17932 of 2003
MR TANVISH U BHATT for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 21/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives services of Rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the communication dated 30.1.2002/1.2.2002 (Annexure "K") of the Additional Industries Commissioner (Development) by which the Addl. Industries Commissioner conveyed cancellation of the eligibility certificate granted in favour of the petitioner with effect from 30.4.1996. The order also consequentially revokes the exemption from sales-tax with effect from 30.4.1996. On the basis of the said order, the Sales-tax Officer, Bhavnagar has also cancelled the sales-tax exemption certificate vide order dated 19.2.2002 (Annexure "L").

3. Since the petitioner has already challenged the said cancellation order dated 19.2.2002 of the Sales-tax Officer before the departmental appellate authority and the matter is presently pending before the Gujarat Sales-tax Tribunal, we need not refer to the said consequential order of the Sales-tax Officer, Bhavnagar passed on 19.2.2002.

4. Coming to the impugned order of the Addl. Industries Commissioner which is passed on the basis that the petitioner had committed breach of the provisions of the Sales-tax Exemption Scheme 1990-95 under which the petitioner was required to continue production from 30.4.1996 to 29.4.2002, but the unit had discontinued production from 1999, the petitioner's case is that the production was kept in abeyance from September, 2000 on account of the uncertainties created by the respondents in not enhancing the eligibility limit of the exemption under the scheme and that thereafter on account of the earthquake which took place on 26.1.2001, the building was damaged and it was not possible for the petitioner to continue the production.

On the other hand, the contention of the learned AGP is that the unit was closed since 1999 and, therefore, the impugned order is just and proper.

5. Having heard the learned counsel for the parties, it appears to us that since the impugned order is passed on the ground of stoppage of production and, thereafter on account of breach of one of the conditions of sales-tax exemption, such an order causing serious prejudice to the petitioner could not have been passed without giving the petitioner an opportunity of being heard. On this short ground alone, we allow this

petition and quash the order dated 30.1.2002/1.2.2002 (Annexure "K") of the Additional Industries Commissioner (Development) as an order.

However, the said order shall be treated as a show cause notice to which the petitioner shall reply within one month from today and thereafter the Addl. Industries Commissioner (Development) shall take appropriate decision in accordance with law after giving the petitioner an opportunity of personal hearing when it will be open to the petitioner to lead such documentary and oral evidence as it may deem fit.

6. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-